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CITATIONS

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410-340—70——1

In the Supreme Court of the United States

OCTOBER TERM, 1970

No.

UNITED STATES OF AMERICA, PETITIONER

v.

DIMAS CAMPOS-SERRANO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case reversing a conviction for knowing possession of a false alien registration card.

OPINION BELOW

The opinion of the court of appeals (Appendix A, *infra*, pp. 15–23) is reported at 430 F. 2d 173.

JURISDICTION

The judgment of the court of appeals (Appendix B, *infra*, p. 24) was entered on June 25, 1970. A petition for rehearing with a suggestion for rehearing

en banc was denied on October 1, 1970 (Appendix C, *infra,* p. 25). On October 16, 1970, Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to November 30, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court below unduly extended *Miranda* v. *Arizona,* 384 U.S. 436, by holding, on the facts of this case, that agents of the Immigration and Naturalization Service were required to give respondent warnings before asking him to produce his alien registration card.

2. Whether an alien registration card is a "required record" which an alien must produce upon request irrespective of whether he is "in custody."

STATEMENT

After a trial in the United States District Court for the Northern District of Illinois, at which respondent waived a jury, he was convicted of having knowingly possessed a forged alien registration receipt card, in violation of 18 U.S.C. 1546. He was sentenced to a prison term of three years, which was suspended, and placed on probation on condition that he return to Mexico and not reenter the United States illegally.[1] The court of appeals reversed on the ground that the forged card had been illegally obtained by the government and was thus inadmissible in evidence.

[1] Respondent was remanded to the custody of the Immigration and Naturalization Service pursuant to a prior order of deportation.

The pertinent facts, which are not in dispute, were developed at a pretrial hearing on respondent's motions to suppress the card and certain statements. In the early morning of November 19, 1968, a number of agents of the Immigration and Naturalization Service (INS) conducted an investigation in an area of Chicago where it was suspected that aliens unlawfully in the United States were working.[2] They arrested some fifteen or sixteen aliens, including one Manuel Rico, for being in the United States in violation of the immigration laws (I Tr. 5, 10–12, 51, 53).[3] About 8:00 a.m., the arrestees were offered the opportunity to return to their residences to obtain personal belongings. Rico accepted and was driven to his home (I Tr. 15, 35, 38, 53–55, 59). INS investigators Jacobs and Burrow accompanied Rico to his apartment where they were admitted by respondent. Upon entering, Burrow immediately advised respondent that Rico was under arrest and was merely being allowed to obtain his belongings (I Tr. 16–17, 39, 41). Burrow accompanied Rico to his room. Jacobs, who remained in the living room with respondent, inquired as to respondent's citizenship and, when respondent replied he was Mexican, asked to see his visa. Respondent explained that he had left his visa in Mexico. He

[2] Under Section 287(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1357(a)(1), immigration investigators are authorized without a warrant to "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States".

[3] "Tr." refers to the transcript of the pretrial suppression hearing and subsequent trial.

produced instead an alien registration receipt card and a Social Security card. Jacobs inspected the documents and showed them to Burrow. Finding nothing amiss, the agents returned the documents to respondent. They then departed with Rico (I Tr. 19–21, 24–26, 41).

When they returned to the car, a third investigator, White, advised Burrow that an individual approaching them looked suspicious. Burrow spoke to the individual, Jose Rodriguez-Ortiz, and inquired as to his citizenship. In response, he produced an alien registration receipt card which, upon examination, Burrow and White determined to have been altered. They then placed Rodriguez-Ortiz under arrest, and White and Burrow went with him to obtain his personal belongings, which were in the same apartment in which they had encountered respondent. Rodriguez-Ortiz opened the door with a key. Upon entering, the agents advised respondent that their purpose was to permit the new arrestee to gather his clothing (I. Tr. 28–31, 60–63, 65, 84–90, 97, 99). While they waited, Burrow requested respondent to produce his alien registration receipt card a second time. After examining it under brighter light than before, Burrow concluded that the card had been altered.[4] Respondent was arrested, given *Miranda* warnings, and transported to the INS offices (I Tr. 67–75, 90–91).

[4] It was later determined that the card had originally been issued to one Diana Gloria Vargas-Garcia, who had applied for a new card (III Tr. 31–36).

The trial judge declined to suppress the card,[5] and subsequently found respondent guilty as charged. The court of appeals reversed, holding that the INS agents had violated respondent's privilege against self-incrimination in connection with their second, although not their first, request to examine his alien entry registration card. The court reasoned that the privilege should not prevent production in the normal immigration inquiry situation (as in the first request) since the cards serve the non-criminal purpose of enabling the government "to be aware of the number of aliens in the country and their status". But the court viewed the second request differently: "[W]hen the inquiry itself is directed at determining a criminal violation such as in this case where the agents are looking for forged 'cards' and the defendant's card had been previously examined, the privilege should apply" (App. A, *infra,* p. 20). The court further concluded that respondent was "in custody" within the meaning of *Miranda* v. *Arizona,* 384 U.S. 436, when the agent asked to see his card the second time. Accordingly, the court held the second inspection improper because it was not preceded by *Miranda* warnings.

The government's petition for rehearing *en banc* was denied by a 3–3 vote of the active judges of the court of appeals (App. C, *infra,* p. 25).

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[5] The judge did suppress post-arrest statements by respondent on the ground that they were made during a period of unnecessary delay in bringing him before a committing magistrate (II Tr. 35–47).

REASONS FOR GRANTING THE WRIT

This case presents important issues in the application of the Fifth Amendment privilege against self-incrimination to immigration investigations and, more generally, to a broad variety of other kinds of investigation. The decision below creates serious uncertainty as to the manner in which immigration investigators can carry out their statutory responsibility to determine whether aliens, or persons believed to be aliens, are lawfully in the United States (see p. 3, n. 2, *supra*). This alien control problem is of considerable practical magnitude. In 1969, 358,579 aliens were admitted to the country for permanent residence, 441,082 resident aliens returned from visits abroad, 3.2 million alien crewmen were granted shore leave and 3.6 million other aliens visited here for temporary periods. 1969 Annual Report of the Attorney General at 82–83. And beyond the enforcement of the immigration laws, the case raises general questions as to the scope of the "required records" exception in the administration of the privilege, and the meaning of "custody" in the application of *Miranda* v. *Arizona*, 384 U.S. 436.

1. *Miranda* requires that an individual be advised of certain rights before there may be "questioning initiated by law enforcement officers after [he] has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444. Warnings are not required before "inquiry of persons not under restraint" or "[g]eneral on-the-scene questioning * * * of citizens in the fact-finding process."

384 U.S. at 477. But formal arrest is not the only circumstance in which warnings must be given. *Mathis v. United States,* 391 U.S. 1; *Orozco* v. *Texas,* 394 U.S. 324. "Custodial interrogation" may also be said to occur where police presence creates "inherently compelling pressures" on the individual "to speak where he would not otherwise do so freely," 384 U.S. at 444, 467, which are the equivalent of those which exist in a custodial environment.[6] The courts of appeals are divided as to whether the test of "custody" depends primarily on subjective factors, such as the suspect's actual feeling that he is not free to go, or objective circumstances which would lead a reasonable man to conclude he is significantly deprived of his freedom. The latter test, which we believe to be correct, has been adopted by the Second and the Ninth Circuits. *United States* v. *Hall,* 421 F. 2d 540 (C.A. 2), certiorari denied, 397 U.S. 990; *Lowe* v. *United States,* 407 F. 2d 1391 (C.A. 9). The Fifth Circuit has stressed the subjective purpose of the interrogating agent, see *Windsor* v. *United States,* 389 F. 2d 530 (C.A. 5), and the decision below appears to have placed critical emphasis on the subjective feelings of the respondent.

[6] Although most cases, unlike this one, have dealt with actual questioning rather than a request to produce a document, we do not here take issue with the court of appeals' determination that the alien registration receipt card, if it is not subject to production on demand as a "required record," see, *infra,* pp. 10–13, is protected by the Fifth Amendment. See *Boyd* v. *United States,* 116 U.S. 616.

The court below relied in part on *Orozco, supra,* and in part on its earlier decision in *United States* v. *Dickerson,* 413 F. 2d 1111 (C.A. 7). That decision required that full *Miranda* warnings be given at the outset of any investigation by special agents of the Internal Revenue Service, despite the absence of any form of custody, because the taxpayer may be unaware of the criminal stakes and his right to refuse to cooperate. The court asserted that the present case (App. A, *infra,* pp. 22–23).

> * * * falls in between the custodial interrogation in *Orozco* and the non-custodial interrogation in *Dickerson.* Here the defendant was asked to produce his card a second time by the same agent. At both times, the agents were accompanied by a roommate of the defendant who was in custody of the agents and who was told to gather up his belongings. We think that the circumstances created an overbearing atmosphere which was sufficient to satisfy the requisite degree of compulsion required by the fifth amendment. *Miranda* v. *Arizona, supra.*

The cause of any "overbearing atmosphere" which may be said to have existed here is not any action by the INS agents but rather respondent's subjective fears that his false card would be discovered. Unlike the situation in *Orozco,*[7] the requests to respondent for his card occurred during normal hours. The fact that his roommates were under arrest both times the officers requested his identification indicated to re-

[7] In that case, the accused was interrogated regarding a homicide in his bedroom at 4:00 a.m. by four police officers, one of whom testified that "petitioner was under arrest and not free to leave." 394 U.S. at 327.

spondent that the officers might question whether he too was lawfully in the country. The officers did nothing else on either occasion which would, for a reasonable man, create a coercive atmosphere. The only possible difference between the two requests is that the second one may have indicated that the officers were more suspicious of respondent than they were at first. But knowledge that an officer is suspicious, regardless of the degree, is not, by itself, so inherently coercive as to constitute the equivalent of custody. If it were, routine law enforcement activity, such as requesting individuals suspected of driving a stolen car to produce their drivers' licenses and questioning persons at the border as to the nature of the goods they are bringing into this country, could not take place without giving *Miranda* warnings. The courts have, however, held such questioning to fall within the category of "general on-the-scene" investigation not requiring the giving of warnings. See *Chavez-Martinez* v. *United States,* 407 F. 2d 535 (C.A. 9), certiorari denied, 396 U.S. 558; *Lowe* v. *United States, supra.* The same result is warranted here.

This case, moreover, is not like *Dickerson, supra.* Whatever the merits of *Dickerson* in the tax field,[8] where an individual may be unaware of the criminal aspects of an investigation, the reasons for its application do not apply to an INS agent's request to see an alien's registration receipt card. There is no possi-

[8] See Note, *Extending Miranda to Administrative Investigations*, 56 Va. L. Rev. 690, 691 (1970), which points out that the Second, Fourth, Fifth, Sixth, Ninth, and Tenth Circuits all have refused to apply *Miranda* to non-custodial tax investigations.

bility of misapprehension as to the criminal implications of such a request, since non-possession is itself an offense (8 U.S.C. 1304(e)).

In short, the decision of the court below unwarrantably extends *Miranda* to a situation where there is neither a coercive atmosphere nor a possibility of confusion which could cause an individual to incriminate himself.

2. Regardless of whether respondent was in "custody," we contend alternatively that the agents had a right to demand production of his alien registration card under the "required records" principle. *Marchetti* v. *United States*, 390 U.S. 39, 55–57; *Shapiro* v. *United States*, 335 U.S. 1, 32–35; *Davis* v. *United States*, 328 U.S. 582, 589–591. Under that principle the Fifth Amendment does not bar compulsory production of a document which the government requires to be kept in the exercise of a legitimate governmental regulatory function that is not directed at a "selective group inhereently suspect of criminal activities." Cf. *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70, 79.

Under the Immigration and Nationality Act, all aliens who remain in the United States more than thirty days must register if they have not done so prior to entry. 8 U.S.C. 1302, 1306. Registration forms require the alien to give detailed information concerning himself, his entry into the United States and his expected length of stay. 8 U.S.C. 1304(a); 8 CFR 264.1 (a). Every alien who registers is issued some kind of evidence that he is qualified to be in the United States

in a designated immigration status. 8 U.S.C. 1303, 1304(d). The alien registration receipt card in question here, popularly known as a "green card," is issued to aliens admitted to the United States for permanent residence. 8 CFR 264.1(b).[9] It contains the alien's picture and other identifying information, as well as certification of his immigrant status. 8 CFR 264.1. Strict control over "green cards," as well as other forms of evidence of registration, is maintained. Every alien over eighteen must carry his card with him at all times; failure to do so is a misdemeanor. 8 U.S.C. 1304(e). If he loses his card, he must immediately apply for a new one. 8 CFR 264.1(e). If the alien is naturalized, dies, permanently departs or is deported from the United States, or if a lost card is found, the card must be surrendered to the Immigration Service. 8 CFR 264.1(d).

The court of appeals acknowledged that the requirement that an alien carry evidence of registration serves the legitimate governmental interest of immigration control, and is "in the non-criminal regulatory area of inquiry" (App. A, *infra*, p. 20). It ruled, nevertheless, that the registration card did not fall within the "required records" principle. It concluded that the card was a private document which an alien would not keep but for the requirement of the regulatory scheme that he do so. We believe that

[9] Other types of "evidence of registration" include crewman landing permits and identification cards, border crossing cards, and arrival-departure records for nonimmigrant aliens. 8 CFR 264.1(b).

this conclusion rests upon untenable distinctions. An alien registration card is just as public as the gasoline ration coupons held to be "required records" in *Davis v. United States, supra,* or the business records involved in *Shapiro* v. *United States, supra.* Nor is there any basis for the restriction that "required records" can be only those which would be kept in the absence of the regulatory scheme; that was not the case in *Davis,* and such a limitation would be patently inconsistent with effective regulation in many areas. Carried to the extent of its logic, such a principle would establish a Fifth Amendment barrier to the enforcement of any licensing scheme.

The anomaly of the refusal of the court below to treat an alien registration card as a "required record" wholly outside the scope of the self-incrimination clause is shown by the basis on which the court finally resolved the issue. It was only because the agents asked to see respondent's card for a second time that the court found a Fifth Amendment problem; the privilege would not apply, it held, for reasons that are not clearly articulated, "in the normal immigration inquiry situation" (App. A., *infra,* p. 20). A "normal" inquiry, the court suggested, is one where the agents seek to determine whether a person is properly in the country; it is different, however, when the agents are looking further to determine whether an alien's card is forged, as respondent's turned out to be. But it is evident that an alien is not lawfully in the country if he relies on a forged card, so that

the inquiries cannot meaningfully be separated. And whether or not the card is a required record is not something that could rationally have changed between the first and the second inspection.

The result of the treatment of the self-incrimination issue by the court below is thus to create considerable uncertainty in an area where clear working rules are needed. This Court should resolve that uncertainty.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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NOVEMBER 1970.

APPENDIX A

In the United States Court of Appeals for the Seventh Circuit

No. 17645

September Term, 1969—April Session, 1970

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

DIMAS CAMPOS-SERRANO, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

June 25, 1970

Before HASTINGS, *Senior Circuit Judge*, and KILEY and KERNER, *Circuit Judges*.

KERNER, *Circuit Judge*. Defendant Dimas Campos-Serrano was indicted for violation of 18 U.S.C. § 1546, knowing possession of a forged alien registration receipt card. He was tried without a jury and was found guilty. From this verdict, he appeals.

On November 19, 1968, agents of the Immigration and Naturalization Service (INS) conducted an investigation of an area in the City of Chicago where it was suspected that aliens who were improperly in the country were working. Agents Jacobs and Burrow having arrested Manuel Rico, accompanied him to his apartment in order that he could obtain his personal belongings. When they arrived at the apartment, the

defendant Campos-Serrano opened the door. The agents explained that Rico had been arrested but was being allowed to gather up his clothing. Agent Jacobs asked the defendant where he was from and when he said Mexico, Jacobs asked for identification. The agent was given an alien registration receipt card and a Social Security card. He was also asked for his passport but he said it was in Mexico. Jacobs examined the alien registration receipt card and showed it to Agent Burrow. The documents were returned to the defendant and the agents left with Rico. Outside the apartment Burrow stopped Jose Rodriguez Ortiz. Upon questioning, he produced an alien registration receipt card which was altered. Agents Burrow and White accompanied Ortiz to his apartment to obtain his personal property, which was the same place Rico and the defendant lived. Upon entering the apartment, Burrow asked the defendant to produce his alien registration receipt card a second time. Burrow examined the card further under better light and discovered it was altered. The defendant was arrested. Defendant moved for suppression of the alien registration receipt card on the grounds that he was not advised of his constitutional rights and the motion was denied.

Defendant attacks the indictment on the grounds that 18 U.S.C. § 1546 does not apply to forged alien registration receipt cards because an alien registration receipt card is not an "immigrant or non-immigrant visa, permit or other document required for entry into the United States." 18 U.S.C. § 1546. We disagree. In 1924, Congress passed a statute which provided for the issuance of temporary reentry permits to facilitate the departure of ailens who were leaving the United States on a temporary basis. Act of May 26, 1924, ch. 190, § 10, 43 Stat. 158. The

permits were to be surrendered upon return. Section 22 of the 1924 Immigration Act provided penalties for forging immigration visas and permits. *Id.* § 22, 43 Stat. 165. The reentry permits were included in the definition of permit by statute. *Id.* § 28(k), 43 Stat. 169.

Alien registration receipt cards were first issued under the Immigration Act of June 28, 1940. Act of June 28, 1940, ch. 439, § 31, 54 Stat. 673–74. Further, the same statute authorized the use of border crossing identification cards as entry documents. *Id.* § 30, 54 Stat. 673. In 1946, the alien registration receipt card was changed by regulation to include the same information as was contained in a Resident Alien's Border Crossing Identification Card and either was accepted upon entry into the country. 17 Fed. Reg. 4921 (May 30, 1952).

In 1948, Section 22 was repealed but was reenacted in modified form as 18 U.S.C. § 1546, which provided in part: "Whoever knowingly forges, counterfeits, alters or falsely makes any immigration visa or permit. . . ." The INS regulation stated:

> (h) The term "permit to enter" means an immigration visa, a reentry permit, a passport visa, a transit certificate, a limited-entry certificate, a border crossing identification card, or a crew-list visa, issued by a permit-issuing authority.
>
> 8 CFR 175.41 subpara. (h)(1952).

An alien registration receipt card is included in this definition since it could be used as a reentry permit. In 1952, 18 U.S.C. § 1546 was modified such that "immigrant or non-immigrant visa, permit, or other document required for entry into the United States" was substituted for "immigration visa or permit." In so doing, Congress was expanding the definition of

forged documents being used to enter the United States. Since alien registration receipt cards were being used for entry previously, we think it was Congress' intention that they be included in § 1546. We do not think it was necessary for the statute to include "reentry" as well as entry permits. Section 22 of the Act of 1924 included reentry permits within the definition of "permit" and we find no clear intention on the part of Congress to diminish this definition. Rather, we find that Congress intended to expand the scope of documents being covered in 18 U.S.C. § 1546.

We do not accept the argument of the defendant that Congress sought to cover possession of forged alien registration receipt cards in 8 U.S.C. §1306(d). Section 1306(d) covers the act of counterfeiting and forging the cards while §1546 is directed to their use for the purpose of entering the United States illegally. Further we find no support for the defendant in *Lau Ow Bew* v. *United States,* 144 U.S. 47 (1892), where the Supreme Court was specifically concerned with the Chinese Exclusion Act of 1882. To the extent that *McFarland* v. *United States,* 19 F. 2d 807 (6th Cir. 1927), implies a different result, we disagree. See *United States* v. *Mouyas,* 42 F. 2d 743, 744 (S.D. N.Y. 1930).

We conclude that indictment under 18 U.S.C. §1546 for possession of a forged alien registration receipt card was proper.

Defendant claims that the agents failed to give him *Miranda* warnings, *Miranda* v. *Arizona,* 384 U.S. 436 (1966), before asking him to produce his alien registration card the second time. For *Miranda* to apply, the documents or papers must be protected by the fifth amendment. *United States* v. *Webb,* 398 F. 2d 553,

556 (4th Cir. 1968), and this is the initial inquiry we must make.

An alien 18 years and older is required to have in his possession "any certificate of alien registration or alien registration receipt card" at all times. 8 U.S.C. § 1304(e). In *Shapiro* v. *United States,* 335 U.S. 1 (1948), the Court concluded that the fifth amendment privilege does not apply to documents which are kept in the normal operation of the business and also required to be kept for examination under the Emergency Price Control Act. The Court in *Marchetti* v. *United States,* 390 U.S. 39 (1968), declined to reassess *Shapiro* but rather distinguished it on the basis that the three elements discussed in *Shapiro* were not satisfied: (1) "obliged to keep and preserve records 'of the same kind as he customarily kept;'" (2) "public aspects;" and (3) "'an essentially non-criminal and regulatory area of inquiry.'" *Marchetti, supra,* at 57. Alien registration receipt cards are not customarily kept. If the government did not require possession of the cards, aliens would not keep them in their normal course of affairs since they are not business records. Further, the cards do not come within the phrase "public aspects." The suggested meaning of "public aspects" is records which are usually known to the public in general rather than records which are essentially personal to the individual. *The Supreme Court, 1967 Term,* 82 Harv. L. Rev. 95, 201 (1968).

> The compulsion that is constitutionally forbid-
> The compulsion that is constitutionally forbidden is a coercion which forces the individual to give open manifestation to thoughts or conduct that would not ordinarily be expressed in a concrete form available to a significant number of people. Thus, for purposes of defining

> the limits of the privilege against self-incrimination, the determining factor is whether the information sought is of such a nature that it would come into independent existence in the absence of government compulsion.
> Note, *Required Information and the Privilege Against Self-Incrimination*, 65 Col. L. Rev. 681, 694 (1965).

Cards which disclose whether an individual is an alien are private and the fact that public officials may require that they be kept does not make them public. *Marchetti* v. *United States, supra* at 57; *The Supreme Court, 1967 Term, supra.* As to the last element, alien registration receipt cards fall in the non-criminal regulatory area of inquiry. The purpose is essentially for the government to be aware of the number of aliens in the country and their status. *Cf. Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965).

Since the purpose of these cards is non-criminal, the fifth amendment privilege should not prevent production in the normal immigration inquiry situation. *Cf. United States* v. *Sullivan*, 274 U.S. 259 (1927). Here the initial inquiry to determine whether the defendant was properly in this country did not violate his fifth amendment privilege. However, when the inquiry itself is directed at determining a criminal violation such as in this case where the agents are looking for forged "cards" and the defendant's card had previously been examined, the privilege should apply. An individual should not be compelled to produce the crime itself. Otherwise, it would be the same as the agents compelling the individual to say: "I did it." Here, production of a forged card was sufficient without more to convict the defendant of possession of

forged entry documents under 18 U.S.C. § 1546 and the defendant's fifth amendment protection should have been respected by the agents.

The government contends that the "card" is not testimonial evidence but physical evidence under *Schmerber* v. *California,* 384 U.S. 757 (1966), and *Gilbert* v. *California,* 388 U.S. 263 (1967). Physical evidence in those cases includes evidence which is used for the purpose of identification of a defendant. Since the two justifications for the fifth amendment privilege are "(1) preservation of official morality, and (2) preservation of individual privacy . . ." McKay, *Self-Incrimination and the New Privacy, The Supreme Court Review—1967,* at 193, 214, physical evidence is not protected. In *Boyd* v. *United States,* 116 U.S. 616 (1886), the Court held that private papers subject to a subpoena were protected by the fifth amendment. Such papers might contain some sort of personal confession of a defendant and are different from handwriting exemplars which may be used to identify a defendant but may not be admitted for their content. To force an individual to produce papers which are unknown to the public would violate his right of privacy. An alien registration receipt card is similar to the private papers in *Boyd.* As we said previously, the cards do not fall within the framework of "public aspects" as used by the Court in *Marchetti.* Here, introduction of the forged card which was in defendant's possession is *prima facie* evidence of violation of 18 U.S.C. § 1546 and the only effective evidence defendant could produce in rebuttal would be for him to testify. Thus, he is being forced to waive his fifth amendment privilege. *See The Supreme Court, 1966 Term,* 81 Harv. L. Rev. 112, 116–17 (1967).

In *Miranda* v. *Arizona,* 384 U.S. 436 (1966), the Court held that an individual must be advised of his

constitutional rights when the interrogation is custodial in nature. "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444. Custodial interrogation may occur outside the surroundings of a police station as in *Orozco* v. *Texas,* 394 U.S. 324, 326–27 (1969), where the defendant was questioned by police officers in his bedroom at 4:30 in the morning. In *Dickerson* v. *United States,* 413 F. 2d 1111 (7th Cir. 1969), this court held that *Miranda* warnings must be given at the beginning of an Internal Revenue Service criminal investigation.

> We understand the teaching of *Miranda* to be that one confronted with governmental authority in an adversary situation should be accorded the opportunity to make an intelligent decision as to the assertion or relinquishment of those constitutional rights designed to protect him under precisely such circumstances. . . . [I]t is the very fact that the taxpayer is not informed of the pendency of a criminal investigation which aggravates the dilemma in which he finds himself. Unaware of the possible consequences of his cooperation with the agents, he may nevertheless believe that he is obligated to supply the necessary information in order to satisfy any possible tax deficiency which he may owe.
>
> 413 F. 2d at 1114–16.

We think that the case before us falls in between the custodial interrogation in *Orozco* and the non-custodial interrogation in *Dickerson.* Here the defendant was asked to produce his card a second time by the same agent. At both times, the agents were accompanied by a roommate of the defendant who was in custody

of the agents and who was told to gather up his belongings. We think that the circumstances created an overbearing atmosphere which was sufficient to satisfy the requisite degree of compulsion required by the fifth amendment. *Miranda* v. *Arizona, supra.*

For the foregoing reasons we think that the defendant should have been given *Miranda* warnings before he was asked to produce his alien registration receipt card a second time. Since the warnings were not given, the forged card should not have been admitted into evidence. Therefore, we reverse and remand this case to the district court for further proceedings consistent with this opinion.

We wish to thank Mr. John J. Cleary, as court-appointed counsel, who was assisted on the brief by Mr. John D. Shullenberger, for their excellent service to the court in behalf of the defendant-appellant.

REVERSED AND REMANDED.

APPENDIX B

United States Court of Appeals for the Seventh Circuit, Chicago, Illinois 60604

No. 17645

Thursday, June 25, 1970

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

DIMAS CAMPOS-SERRANO, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Before Honorable JOHN S. HASTINGS, Senior Circuit Judge; Honorable ROGER J. KILEY, Circuit Judge; Honorable OTTO KERNER, Circuit Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from, be, and the same is hereby, Reversed, and that this cause, be, and it is hereby Remanded to the said District Court for further proceedings consistent with the opinion of this Court filed this day.

APPENDIX C

United States Court of Appeals for the Seventh Circuit, Chicago, Illinois 60604

No. 17645

Thursday, October 1, 1970

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

DIMAS CAMPOS-SERRANO, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Before Hon. LUTHER M. SWYGERT, Chief Judge * Hon. JOHN S. HASTINGS, Senior Circuit Judge, Hon. ROGER J. KILEY, Circuit Judge **, Hon. THOMAS E. FAIRCHILD, Circuit Judge*, Hon. WALTER J. CUMMINGS, Circuit Judge**, Hon. OTTO KERNER, Circuit Judge**, Hon. WILBUR F. PELL, JR., Circuit Judge*

As all members of the panel (Judges Hastings, Kiley and Kerner) voted to deny the petition for rehearing filed by the government in the above entitled matter, it is ordered that the said petition for rehearing be, and the same is hereby, denied.

On the government's suggestion for rehearing *en banc,* since a majority of the Judges in active service did not vote to grant a rehearing *en banc,* the suggestions is therefore DENIED.

* Judges Swygert, Fairchild and Pell voted to grant the suggestion for hearing *en banc.*

** Judges Kiley, Cummings and Kerner voted to deny the suggestion for rehearing *en banc.*

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